



STATE OF INDIANA

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February 9, 2010

Mr. Jeremy Comeau
7812 Ithaca Way
Indianapolis, IN 46239

Re: Informal Inquiry 09-INF-35; Access to Bulk Records

Dear Mr. Comeau:

This is in response to your informal inquiry regarding access to bulk records of the Indiana Supreme Court Division of State Court Administration (the "Division"). Pursuant to Indiana Code § 5-14-4-10(5), I issue the following informal advisory opinion. My opinion is based on applicable provisions of the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Division's response to your inquiry is enclosed for your review.

You seek an informal opinion regarding the Division's denial of your request for access to bulk records. Specifically, you sought "a one time snapshot of several years [sic] worth of case names from the Division's Judicial Technology and Automation Committee ("JTAC")." The Division oversees the electronic storage of court data for many state courts via the Odyssey Case Management System ("OCMS") through a contract with Tyler Technologies, Inc. Your request was approved by the Division's director of trial court management, James R. Walker, but you had not received any records from the Division as of the date of your inquiry.

Subsequently, you contacted Kristin Donnelly-Miller and James Walker at the Division, who informed you that access to OCMS could not currently be provided because the Division is awaiting the implementation of a policy concerning access to the database. The policy would cover whether the data will be available and, if so, how access will be provided.

After you issued a second request for the data contained within OCMS, the Division's chief deputy and executive director, David J. Remondini, responded to you via a letter in which he noted that you may view case records through the Supreme Court's OCMS public access website. Moreover, case records are generally available unless they are specifically excepted from disclosure under Administrative Rule 9 or sections 3 or 4 of the APRA. Mr. Remondini further noted, however, that your request was for bulk

distribution of court records, which is governed by Ind. Administrative Rule 9(F). That rule provides:

Upon written request as provided in section (F), bulk distribution of compiled information that is not excluded by Section (G) or (H) of this rule may be provided.

Admin. R. 9(F)(1). Mr. Remondini also notes the *Commentary* to Rule 9, which notes that the rule “authorizes courts, in their discretion, to provide access to bulk distribution and compiled information. It does not require that such information be made available.” *Commentary*, Admin. R. 9(F). Mr. Remondini further informed you that the Supreme Court, through the Division, is currently drafting a policy that will allow the Division to consider the factors that Rule 9(F) requires to be considered before a bulk request is granted: (1) a determination that the information is consistent with the purposes of this rule; (2) that resources are available to prepare the information; and (3) that fulfilling the request is an appropriate use of public resources. Admin. R. 9(F).

Initially, you seek my opinion regarding whether or not information in the OCMS database is a “court record” and, if so, whether the Division has any basis under the APRA to deny access to such records. Administrative Rule 9 applies to “all court records,” according to Admin. R. 9(A)(5). The Rule also provides the following definitions:

- (1) “Court Record” means both case records and administrative records.
- (2) “Case Record” means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case.
- (3) “Administrative Record” means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case.

Admin. R. 9(A)(1)-(3). You argue that the OCMS data are not court records because they are not associated with a “particular case” as required by the definition of a “case record.” You reason that it “seems unlikely that the entire database taken as a whole was created, collected, or maintained by a court agency in connection with a particular case. It is more akin to a summary or index of case records, and that summary or index is not a case record itself.” Regardless of whether or not the records are case records, I do not agree with your position that the records are not court records because the OCMS data seem to fit within the definition of an “administrative record,” which includes information or data that “pertain[] to the administration of the judicial branch of government and not associated with any particular case.” Because it is my opinion that

the OCMS data are administrative records under 9(A)(3), it follows that they are court records under 9(A)(1) and, therefore, subject to the remaining provisions of Rule 9.

You also ask whether the Division “has a valid exemption from disclosure under I.C. § 5-14-3-4(a)(8) or elsewhere to deny access to the database as envisioned by I.C. § 5-14-13-3(d). Under Ind. Code § 5-14-3-4(a)(8), a public agency may not disclose a record declared confidential by or under rules adopted by the Indiana Supreme Court. As of January 1, 2005, the court adopted a version of Ind. Administrative Rule 9 that prescribes procedures for the distribution of bulk records. Admin. R. 9(F); *see also Opinion of the Public Access Counselor 05-FC-82*. While you are correct that section 3(d) of the APRA requires public agencies to make reasonable efforts to provide a requester with access to electronically stored information, that section applies only to that information that is otherwise disclosable under the APRA and not excepted from disclosure under either section 3 or 4. I.C. § 5-14-3-3(d). Because the bulk data you have requested is subject to Admin. R. 9, it is specifically excepted from disclosure under section 3(a)(8) of the APRA.

Finally, you ask whether the Division appropriately interpreted Admin. R. 9 in denying your request, and whether the Division has “discretion equal to a courts [sic] to deny reasonable access to public records or court records in Odyssey CMS.” However, the appropriate inquiry here is not whether the Division has the authority to deny your request because it does not appear that the Division has actually denied your request. Rather, the issue is whether the Division acted in accordance with the APRA when it informed you that your requested records could not be produced until the Division adopted a policy to ensure that its decisions regarding bulk records requests comply with the requirements of Rule 9(F).

The APRA contains no prescribed timeframes when public records must be produced by an agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Moreover, section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act, and the ultimate burden lies with the public agency to show the time period for producing documents is reasonable. I.C. §5-14-3-7(c); *Opinion of the Public Access Counselor 02-FC-45*.

Here, it is my opinion that the Division has acted reasonably by refusing to provide you with the bulk data prior to adopting its policy. The Division’s delay is due to its efforts to comply with section (F) of Rule 9 (and, by extension, section 3(a)(8) of the APRA). As Mr. Remondini has noted, the language within section (F) is permissive rather than mandatory; that is, the Division is not required to grant your request for access

to bulk records in any event. As such, in my opinion it is reasonable for the Division to defer a decision regarding your request until the adoption of the bulk records policy described by Mr. Remondini.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: David J. Remondini, Indiana Supreme Court Division of State Court
Administration